

2021 AUG -9 PM 3:21  
CLERK OF COURT  
WASHINGTON  
DEPT. OF CORRECTIONS

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

State of Washington

Respondents,

v.s.

RICHARD PLESHNER,

Appellant.

No. # 54676-1-2

Appealed from:

Mason County Cause No. 19-1-00359-23

SUPPLEMENTAL STATEMENT OF  
ADDITIONAL GROUNDS AND SUPPLEMENTAL  
P.R.P.(pro-se)(with exhibits)

1 HEAR COMES; RICHARD PLESHNER, appellant who was charged  
2 with indecent liberties, based on a single, false allegation, made  
3 by Tina Gumm who changed her story no less than four times!!! For  
4 example the Trial Transcript (T.T.), on page no. 334 @ line no. 13.) gives  
5 you; "Then the only thing I'm left to believe is that I could be wrong  
6 about Richard hurting me... I need the attorney's number... I cannot  
7 make it to court until tomorrow." (see: exhibit "E"). This court  
8 ordered; "Mixed Petition", shows that the prosecutor knew from the start,  
9 or discovered shortly later that Tina lied about material facts at my  
10 trial. This is why this court needs to either reverse or dismiss my  
11 conviction. The issues I list in this petition are not inclusive and  
12 I ask this court to grant me relief on any grounds it see's fit to do  
13 so. I also ask this court to incorporate a earlier P.R.P. I sent this  
14 court, in this petition. (It has some case law in it that the prison  
15 either lost or will not give back to me, after I had been transported.).  
16  
17  
18

ISSUE No.#1-THERE IS A PICTURE THAT PROVES I'M NOT GUILTY:

Exhibit"B" is a photo that proves that this court absolutely has to either dismiss my case, or give me a new and fair trial, regardless of Washington court rules or case law. The facts are my jury never saw this photograph!!! The state driven story Tina tells in short is: A.) Tina goes to my house about 11:30 p.m. B.) She claims she is woken up from feeling a hand on her vagina, at about 7:30 a.m. on September 18th, 2019. C.) She says that she drives "us", up to the AM/PM to get some breakfast. D.) Finally; suffering from P.T.S.D., shock, and trauma she finally gets away from me when suddenly... Jasmine Palma appears out of thin air so she can take me home letting Tina drive away by herself, in shock and despair. (See Exhibit"G" page no.7 @ line no.25 and page no.8 @ line no.1.)

However; page no. 7 @ line no.10 of Exhibit"G" tells a totally different scenario that also matches the photograph Exhibit"B"!!! This one detail is not deminus! This one detail forces you to come to some totally different conclusions. None-the-less; the jury heard lies regarding material facts so the state could tell the first narrative. For example the following excerpts of the Trial Transcript(T.T.) gives you:

Page 146 @ line no.18."I mean I was driving but...yeah...so I took him to WalMart and he met with his girlfriend or girlfriend and..."

Page 147 @ line no.5."Q.And so you did in fact drive him up to WalMart and the AM/PM?"

Page 147 @ line no.6."A. Yeah."

Page 147 @ line no.7."Q. And you...your testimony was that he met up with another individual?"

Page 147 @ line no.9."A....Yeah."

Page 147 @ line no.12."Q. And (then you) separated from the defendant?"

Page 147 @ line no.13."A. Yeah."

NOTE: THE PHOTOGRAPH EXHIBIT"B" PROVES THESE STATEMENTS ARE LIES!!!

Page 216 @ line no.14."Q. Okay, did you find that as a traumatic event?"

Page 216 @ line no.15."A. Repulsive."

Page 216 @ line no.16."Q. Repulsive?"

Page 216 @ line no.17."A. Uh-huh."

NOTE: FROM HERE THE STATE COMPOUNDS THE PREJUDICE I SUFFERED AND PUTS WORDS IN TINA'S MOUTH!

Page 386 @ line no.4."Q. Your testimony was on the 18th. around 7:30a.m. you woke up,...were you wrong about that?"

Page 386 @ line no.6."A. No."

ISSUE No.#1-Con't.

It should be noted at this time that Tina never testified to anything regarding 7:30 a.m. She never said the exact time she woke up. This was a material fact that simply was not testified about by Tina. However; Tina does state a time in the statement she gave to the Shelton Police Department. In the statment on page no.4 @ line no.1 she say's"...about 7:30 in the morning."(see exhibit"G"). This is just one example where the state put words in Tina's mouth. However; the real problem is he lies to Tina and the jury to do it.[sic.]

The photo(exhibit"B")has a almost unfakeable "Apple"(date/time) stamp of:"8:23"a.m. The photo leaves you with one logical conclusion and disproves the states naritive. It shows the following happend:

- 1.) Tina and I leave my house to go to the AM/PM just after 7:30a.m.
- 2.) Tina and I had breakfast at the AM/PM and Tina talked to a guy friend while we were there. She laughed and joked. The video at the AM/PM would have shown she had no signs of trauma or dispare!
- 3.) There is no disputing the fact that the photo shows Tina back on my bed 53 minutes after 7:30, and proves Jasmine Palma never picked me up at the AM/PM. The Shelton Police and the state never asked Jasmine anything about what happend at the AM/PM.

The "Interview Transcript" of Tina Gumm, taken by the Shelton Police Department; (exhibit"G") on page no.7 @ line no.10 gives you, "-he had me take him to the AM/PM...and then back to his house!".

By now the state knows it has a problem, and I argue is committed to a win at any cost mentality. Because, despite the forgoing testimony and evidence, on pages 457 and 458 @ line no.23 the state tells the jury "He wanted to get breakfast, and she drove him up to the AM/PM and they got coffee. And it's at that time he met up with his then girlfriend; "Jasmine Palma", and then Tina took off."

So not only was the jury told a bold face lie, but the defense had to hit a moving target depending on which story the state told on the day of trial. It's not one inconsistant statement by Tina or the prosecutor ...it's not a de-minus error...It's a flat out lie, in a case where there was no evidence and actually very little story. It's not a stretch to believe that had the jury known and seen the photograph, the outcome of my verdict would have been different. After all; who would believe that a woman...expecially a 47 year old prostitute, (T.T. page no.54 @ line no.16

ISSUE No.#1-Con't.

-and page 52 @ line no.17)who was assaulted at 7:30a.m. in a guys bed... then feel's "violated" and "repulsed" and "gross"(T.T. pages 256 and 387) and 53 minutes later is right back in the very same bed!!! No reasonable man or woman would act this way.(Exhibit"B")Shows Tina unaffected by mornings events!) Exhibit "B" and the following case law shows the legal errors that happend in my case. Remember;T.T. page 147 @ line no.12."Q. And seperate from the defendant? Then on line no.13."A. Yeah." Here;there can be no arguement...The jury heard a lie regarding a material fact!!!

The Supreme Court Of The United States said;"More than 30 years ago that the 14th. Amendment cannot tolerate a state criminal conviction obtained by knowing use of false evidence...There has been no deviation from that established principle." Miller v. Pate;386 U.S.1,7(1967). More-over; In Brady v. Maryland;373 U.S.83,10LEd.2d.215,83 S.Ct.1194(no.490)(1963)"Under the first standard in Agurs;If the prosecutor knew or should have known that his case contained"perjured testimony"then the conviction must be set aside if there is any reasonable likelihood that this evidence could have affected the judgement of the jury."427 U.S.@ 103,96 S. Ct.@ 2397. It's more than reasonable to believe that if a reasonable juror had seen the photograph of Tina on my bed at 8:23a.m. waiting for the Domestic Violence Shelter to open at 9:00a.m.,that they would have voted differently. (see exhibits"B"and"G") Finally;the photo proves that Jasmine never picked me up at the AM/PM that morning of the 18th. The state knew from the time Tina made her first statement to the Shelton Police that she gave two(2) different accounts,on the same page of her statement!(see exhibit"G"@ page 7 and 8) I feel my case is very much like the case of: State v. Dockery; C.O.A. Div.2 Sept.25th.,2018. 5 wash.App.2d.1024. IE states:"Dockery relies on Napue v. People of the state of Illinois;360 U.S.@269. A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgement of the jury."(see:In Pers. Restraint of Benn;134 Wn.2d.868,936,952.P.2d.116) I think this case is simular too. McSherry v. City Of Long Beach;584F. 3d.1129 (2009) U.S. App. Lexis 28909,9th.cir. cal.(2009)."Fabricating evidence would violate plaintiff's due process right not to be subjected to criminal charges based on false evidence that the government deliberately fabricated," The photo also proves that if Jasmine Palma had been allowed to testify she could have

ISSUE No.#1-Con't.

-fully refuted the narrative that Tina told the jury where she said;"she got away from me at the AM/PM and that Jasmine picked me up there." My attorney never asked Tina Gumm one word about how she could be two places at once...or asked her to explain her Police Statement. I believe this case is like mine and grounds for relief. U.S. Court Of Appeals,9th. Circuit;U.S. v. Robert E. Tucker;716 F.2d.576.Oct. 6th.(1983)(Lexis 24200) (case no.#79-1657)@ 7."At trial;"Keating" failed to impeach any of the government's witness with prior inconsistent statements." If Tina had been forced to admit that she drove me home, and got back on my bed.. It would have been hard for a jury to believe she ever was a victim![sic.]

The above events and evidence show why this court should at the very least appoint counsel to this case to help me move my P.R.P. forward in this court. Further; I can't imagine a case that could cry out better, that would cause this court to order that a **Americus Currie** brief be submitted from the appropriate group or organization.

I know that my exhibit "H" is not case law that has any authority in this court. It is infact just a news clipping from a Thursday, May 21, 2020. USA TODAY newspaper. None-The-Less; The truth is the truth and it does a good job of quoting the late Justice Ruth Bader Ginsburg. In a case called;"U.S. v. Michael Flynn" she held for a unanimous court that;"...the judiciary's role is to protect criminal defendants from overzealous prosecutors."

I have been in state custody since JANUARY 16th., 2020. Every day that I sit in state custody is another day justice goes uncorrected.

In my other P.R.P. I asked this court to appoint counsel under "GR33" and add to the fact that the issues in this case far exceed the skills of a "Jail House Lawer", this court really needs to appoint counsel so my evidence can be recovered or protected before it is lost to the sands of time forever. Also; if this court did not grant some form of relief but a higher court did...the recovery of my evidence would no doubt become even more problematic do to the fact that by then even more time would have passed.

ISSUE No.#2-I WAS DENIED 6th. AMENDMENT RIGHT OF CONFRONTATION:

Exhibits "c" and "D" are proof that Tina had pending felony charges against her by the very same prosecutor who had full control of whether or not the prosecutions happen or not. Exhibit "C" Shows the pending G.T.A. charge referred to in the T.T. on page no.63 @ line no.16. "Mr. Pleshner's concerned that one of the motives for Tina to be blackmailing Jasmine Palma was to keep her as a witness for---BECAUSE OF AN AUTO THEFT CHARGE THAT---THAT TINA---TINA CURRENTLY HAS...AND IT IS ONGOING!"

On page two of Exhibit "D" @ line no.12."...they(the mason co.prosecutors office.) are charging me with second degree trespassing." This situation gave the state a crazy amount of leverage over Tina Gumm, and since I could not ask her about this situation in front of the jury...it clearly violated my Sixth Amendment right of confrontation, cross examination clause. Exhibit "C" is a dismissal of the G.T.A. charge. However; you can also see the case is not resolved until March 8th., 2021...just a few days after I filed my P.R.P. Once I got the photo to your court, (Exhibit "B") I guess the prosecutor no longer had a reason to drag Tina's case out? Exhibits "C" and "D" are proof that the state had a duty to do one of the following prior to my trial. 1. Dismiss all the charges the state had pending against Tina Gumm. 2. Offer Tina immunity to all pending charges. 3. Try or make a deal with Tina prior to my trial. 4. Tell the jury Tina has the pending charges.

To let what happen in my case become acceptable conduct, opens the door for all trials to become as corrupt and scandalous as my trial was. The case law that makes my point is: U.S. v. Alexius; U.S. C.O.A. 5th. cir., Feb 15th, 1996 76F.3d.642, 64 USWL2550, 43 Fed.R.Evid.Serv.1124. "At oral argument the government also argued that if the district court erred by refusing to allow Alexius to cross examine Baily regarding his pending felony charges, the error was harmless. We are not persuaded by either argument." Also; the case of:

U.S.A. v.s. Fidel Rodrigues; U.S. C.O.A. for the 9th. Circuit; 439F.2d.782, (1971) U.S.App.Lexis 11272 (No.25817)  
"The government relied almost entirely upon her testimony which had little or no corroboration."

In this case the judge at least asked whether she had been given any promise about what the other trial court or prosecutor would do for her because she testified. I did not even get this one question asked before the jury.

Another case that makes my point is:

ISSUE No.#2-Con't.

Delaware v. Van Arsdall;U.S. Supreme Court;475 U.S.  
673,106 S.Ct. 1431,89 1. Ed.2d. 674,(April 7th.,1986)  
"Held:The trial court's denial of respondent's opportunity  
to impeach the prosecutions witness for bias violated  
respondent's right under the confrontation clause."

Tina had a lot of past theft charges. Trial Transcript on page no. 50 @ line no.20;"I have one,two,three,four---seven theft charges. Six of them being in the third degree,one being in the second degree and then two making false or misleading statements." The state argued that they were inadmissible under 404(b). I argue this is nothing but a misuse of a rule. The rule is obviously designed to protect the rights of a defendant ...not a states witness.[sic.] There is no logical reason why the rules of a defendant testifying would be the same as the rules for a states witness. In regards to Tina testifying I feel the following case applys:

STATE v.s. RAY;S.C.of wash.116 wash.2d531,806P.2d.1220  
(March.21st.1991)"...theft contituted a crime of dishonesty  
and is evidence of wich could be introduced for purposes of  
impeaching defendant's creadibility."

My point of view is not exactly novel. While not exactly on point I argue the situtation is not unlike the A-symmetrical testimony that comes or does not come from a spouce. Here the state does not have a equal witness or equal rule. The state can call a unlimited number of witnesses...the defendant has only one...himself.

ISSUE No.#3-DENIED RIGHT TO CALL JASMINE PALMA AS A WITNESS:

This issue should be called: "Jasmine takes the 5th. fiasco". It all starts on page no.28 of the Trial Transcript(T.T.), and runs to page 72. It gets so bad that I unartfully sum it up with a single sentence on page 63 of the(T.T.) @ line no.1. "Jesus Christ, this is so fucked up!". In just these few pages you get:

A.) Jasmine's attorney; "Peater Jones", basically hijacks my defense! He tells the court on(T.T.)page no.60 @ line no.20 "And there was an ongoing argument between; Mr.Pleshner, Ms.Palma, and Ms.Gumm that involved a accident which may have involved Mr.Gumm committing some acts that frankly in some lights could have been seen as blackmailing Ms.Palma about that accident and about reporting that accident to the Police. Then on (T.T.) page 62 @ line no.24 "And so I see where there maybe some relevance there".

So why is he telling the judge this? Why is he trying to force the defense to expose it's trial strategy to the prosecution? why is he telling the court how I wanted to use Jasmine's testimony? He is clearly doing Mr. Austin's job! Part of the problem is Mr.Austin never made any plans to use Jasmine's testimony to impeach Tina about what happend or should I say what did not happen at the AM/PM. Austin is so dead-set against using Jasmine, he tells the court a lie. There is so much going wrong here there is no way to list all the issues in one P.R.P. and Appeal. The following makes my point:

B.) Trial Transcript page 30 on line no.18 "I really think that she wouldn't be able to testify because of other matters...And she'd have to take the fifth."

If my attorney had told me he had a mental death hold on this misguided belief, I would have gotten rid of him much earlier. He knew this and tried to delay my ability to hire different counsel, or make plans to represent myself pro-se. He did this almost from the start of the trial process and this conduct was one of the reasons there was a total break down of the attorney client relationship. The following case "illuminates" my point: U.S. v.s. Tucker; 716F.2d 576, 585-87(9th. cir. 1983) "Counsel's failure to impeach a state witness with prior inconsistent statements was ineffective assistance." And the case of: "Groseclose v.s. Bell; 130F.3d 1161, (6th. cir. 1997) "Describing defense counsel's failure to have any theory what-so-ever, and failure to conduct any meaningful adversarial challenge is especially appalling."

ISSUE No.#3-Con't.

The record reflects that one of the biggest problems with the issue of whether or not Jasmine has a 5th. Amendment protections regarding given events or if I have a right to call her as a witness were mostly caused by a judge who was totally inept and inexperienced in dealing with this issue.

C.)(T.T.)page no.70 @ line no.3"THE COURT:I'M not going to be making any ruling on Ms.Palma's testimony untill the State has rested. And at that point I will then know if anything's relevent. Okay?".

Here the Judge totally fails to do his duty and does not ask Jasmine Palma a single question! This failure contaminates the entire trial and causes it to limp along. The case law for this proposition shows at the very least he needed to have some kind of 3.5 hearing before my trial."One must invoke it on a question-by-question basis and the courts will determine the propriety of the assertions on the same basis. North River Insurance Co. v.s. Stefanou;831 F. 2d. 484(4th. cir. 1987) In Re Master Key Litigation; 507 F. 2d. 292,293,(9th. cir. 1974)"However;there must be a real possibility of criminal prosecution,the risk cannot be imaginary remote or speculative. United States v. Apfelbaum;445 U.S. 115,128(1980)". The Judge had a duty to announce this is the standard that he would be using. Had the court asked just a few questions he would have found out Tina's car had been hauled to a scrap yard,and was long gone. The Shelton Police had refused to investigate because Jasmine's Jeep did not have any damage,and Tina did not have any proof her car had any damage at all. The court had a duty to force the state to put up,or shut up on this issue so that my witness was not interfered with. Regardless;the car issue did not have a thing to do with whether or not Jasmine picked me up at the AM/PM.

It's totally obvious that my attorney does not understand the case at all!

D.)(T.T.)Pg.64@line no.19.He say's:"...In which case we probably wouldn't need...need her for anything...".

It's hard to imagine what Austin was thinking? Jasmine was our only before the fact witness!!! Further;there were several different issues "we" needed her for...Like:what did not happen at the AM/PM for example.

"In any event,if another party challenges an assertion of privilege the witness must present sufficient evidence for the court to conclude the fear of prosecution is warranted." In re Morganroth;718 F. 2d. 161,168, (6th. cir. 1983). In my case,this clearly was not done and everyone dropped the ball on this issue. Even the State had a duty to determine the truth.

ISSUE No.#3-Con't.

The U.S. and Washington state constitutions guarantee that I had a right to call Jasmine Palma as a witness. The court has a duty to make sure this right is unhampered. I obviously wanted Jasmine as a witness. Someone obviously told Jasmine to come to court.

E.)(T.T.)Pg.28@line no.4"THE COURT:Are you a witness?  
MS.PALMA:YES."

I offer the following case for the proposition that Jasmine's testimony was important to my defense and a fair trial. IN *Hart v. Gomez*; 174 F. 3d. 1067 (9th. cir. 1999) "OVER VIEW; Defendant was convicted of molesting his daughter, and then petitioned for a writ of habeas corpus, claiming that his trial attorney failed to investigate and introduce evidence central to his defense...The appellate court reversed, holding that the girlfriends corroborative evidence would have raised a substantial doubt regarding defendant's guilt, and that if the records had been offered as evidence, a reasonable juror might not have convicted the defendant of the charges. As a result, the defendant was entitled to a writ of habeas corpus."

Clearly; Jasmine could testify to important relevant facts. Remember; Remember; "Relevant evidence is that which has ANY TENDENCY to make the existence of any fact of consequence to the case more or less probable than without the evidence." ER 401; Thomas, 150 Wash. 2d. at 858, 83 P. 3d. 970 "This threshold for relevancy is low, and even minimally relevant evidence is admissible." State v. Darden; 145 Wash. 2d. 612, 621, 41 P.3d. 1189 (2002) "Dr. Yuille's testimony went straight to the credibility of L.B. (The complaining witness.)".

My Right to call Jasmine Palma was interfered with for a variety of reasons. The loss of her testimony no doubt had a significant impact on my ability to have a fair trial.

ISSUE No.#4-The State and the Shelton Police Dept. failed to collect and perserve materially exculpatory evidence:

The lost exculpatory evidence in my case was not only plain and obvious...but was deliberately avoided. The evidence was: A.) Tina's cell-phone and Google Map records. B.) Witness statements and videos from the AM/PM gas station. C.) Witness statement of Jasmine Palma. D.) The videos and photos that were on my first Apple i-phnoe 6S.E.,that was for a time in a Mason County jail locker. Exhibit:"G" is the TRANSCRIPT INTERVIEW OF TINA GUMM. On page 3 @ line no.25;"...have to look on Google Maps to know exactly."(For issue "A"). Page 7 @ line no.10;"I had-he had me take him to the AM/PM and then back to his house."(For issue "B"). Then page 7 @ line no.25;"And then he-Jasmine Palma picked him up from the parking lot then."(For issue "C"). The above facts show that the Shelton Police did not secure any of the exculpatory or material evidence. Even the Trial Transcript says as much. (T.T.) page no.272 @ line no.1;"Q. By Mr.Austin: So as far as your investigation,there really was no investigation.

All you did was take a statement (from Tina),crrrect? A. By Paulsen: The interviews were my investigation,yes.". Idem"D" involves my cell phone that was placed in a jail locker,which caused data to become lost. Exhibit"A" outlines the loss of material evidence and prosecutorial misconduct which started in this case at my very first hearing. Exhibit"A" is a motion for a (4)four hour delay prior to my arraignment in Superior Court. The motion lays out almost every issue now before this court. Idem no.1 of the motion is about a video the state had in its possession,in a jail locker-via my cell phone. The state had full control of my phone and chose to let it go dead,despite knowing full well that evidence would be lost.[sic.] As it turns out not all of it was!!!(see:Exhibit"B") At the hearing the state made it clear they did not care about any videos or photos that shows Tina had more than a little motive to bring false charges against me. The state was not interested in having the truth be a factor in this case. Infact; not only did the State not attempt to find or secure evidence that would be faviorable to the defense...They were more than happy to stand by and watch it get distroyed! This attitude was pervasive throughout this entire case. The lost two pictures of Tina at my house AFTER we went to the AM/PM and the video of Tina blackmailing Jasmine Palma were all under the control of the state at one time or another. The prosecutor didn't even ask the Shelton Police to look into any of the facts of my motion. Do to the lack of deligence by the Shelton Police Department I believe the video of Tina and I interacting at the AM/PM is now lost to the sands of time!

ISSUE No.#4-Con't.

Currently, I believe the two other photos of Tina on my bed, the video showing Tina blackmailing Jasmine and the AM/PM videos are all gone!

I believe this case is like mine:

State v. Acheson; 48 Wn. App. 630, 740 P. 2d. 346 (1987) review denied, 110 Wn. 2d. 1004 (1998). "If the evidence meets the standards of **"MATERIALLY EXCULPATORY"** and the state fails to preserve it, criminal charges against the defendant must be dismissed" and State v. Burden; 104 Wn. App. 507, 17 P. 3d. 1211 (2001). Also; "Relevant evidence is that which has any tendency to make the existence of any fact of consequence to the case more or less probable than without the evidence." ER 401; Thomas, 150 Wash. 2d. @ 858 83 P. 3d. 970. This threshold for relevancy is low, and even minimally relevant evidence is admissible. State v. S. Darden; 145 Wash. 2d. 612, 621, 41 P. 3d. 1189 (2002). A big part of Tina's story involved what happened or did not happen at the AM/PM with Jasmine Palma. How could the failure to get a statement from Jasmine not be considered a failure to investigate?

ISSUE No.#5-The State Committed Prosecutorial Misconduct:

The prosecutorial misconduct in this case happend from the very first hearing to long after my trial was over. The prosecutor did not have any interest in presenting the truth or seeing that justice was done. My exhibit"H" shows that this behavior is not unheard of and my case is not a exception. Justice Ruth Bader Ginsburg held;"This is especially true in a criminal case, where the judiciary's role is to protect criminal defendants from overzealous prosecutors.". I believe the entire Trial Transcript and the following case law show that the prosecutor in my case was not only unethical but guilty of putting a fraud before my jury.

State v. Lindsay is a example of what happend in my case.(171 Wn.App808,288 P. 3d. 641,Lexis 2609)(2012), and so is State v. Jennifer Sarah Holmes;S.C.,180 Wn. 2d. 423,326 P.3d.125,Lexis 374,case no.88437-4,(2014) "We never-the-less find the fairness of the trial, which turned largely on credibility, was tainted by (1.) The pervasive misconduct of the prosecutor and (2.) The unprofessionalism displayed by both the prosecutor and Holmes's attorney throughout the proceedings. We reverse the court of appeals because of both problems. We also reverse the defendants convictions and remand this case for a new trial." Another good example is the case of State v. Angela Elizabeth King;C.O.A. Div.3,Wash.App. Lexis 1612,No.34374-0-3,(filed July11,2017.) "In analyzing prejudice resulting from prosecutorial misconduct we do not look at the comments in isolation but in the context of the total argument, the issues in the case, the evidence, and the instructions given to the jury. State v. Warren;165 Wn. 2d.@28(2008) State v. Yates; 161 Wn.2d.@ 774. When applying this standard the court usually measures the strength of the state's evidence of guilt. State v. Barry: 183 Wn. 2d.297,303,352 P.3d.161(2015). "Appellate judges pampered existence in an ivory tower disqualifies them from being representatives of the community.". The United States Supreme Court Justice Robert Jackson Wrote:"The naive assumption that the prejudicial effects can be over-come by instructions to the jury...all practicing lawyers know it to be unmitigated fiction". Krulewitch v. United States;336 U.S. 440,453,69 S. Ct.716,93. L.Ed. 790(1949) Jackson,J. concurring and quoted in State v. Arredondo;188 Wn.2d. 44,280,394 P. 3d. 348(2017).

On page 463 of the Trial Transcript at line no.12 the words of the prosecutor cannot be denied. He said;"He put his hands down her pants because it was "his belief" no one would believe what she said. But keep in mind, she stuck to her story, time, after time, after time. So keep that in mind when the defense makes his argument".

I have 3 issues with these few lines. They are:

- 1.)First he tells the jury my belief is... Despite the fact I never testified to anything and neither did anybody else say what I believe.
- 2.)Next;he tells the jury that my motive is that I thought no one would believe Tina...no doubt because she is such a liar!!!
- 3.)Finely;he has the gull to tell the jury that Tina never changed her story;knowing full well that Tina changed her story no

ISSUE No.#5-Con't. -less than four times during the course of the trial, let alone how many times she changed her mind since she, "Tina", first made the alleged allegation.

If these passages were not bad enough, the jury definately picked up on the overly campie, overly friendly, and overly sappie comments of the prosecutor constuting improper vouching. They were:

- 1.) T.T. page no.392 @ line no.13.) "Mr.Bickerton: Thank you, Tina, HAVE A GREAT DAY...Make sure you speak with Tiffany.
- 2.) T.T. page no.180 @ line no.1.) " Tina, do you need a cushion for the back of that chair?"
- 3.) T.T. page no.205 @ line no.8.) " Do you want me to fill that water cup back up?"
- 4.) T.T. page no.205 @ line no.11.) "Would you like more water.ma'am?"
- 5.) T.T. page no.258 @ line no.12.) "Okay, thank you Ms.Gumm."...(then he say's) "I appreciate it."
- 6.) T.T. page no.386 @ line no.7.) "Your testimony was when you woke up at 7:30 a.m. in the morning on the 18th. were you wrong about that?". (Note: Here Tina never actually testifys to a time, but did say 7:30 a.m. in her police interview. see: Exhibit "G" page no.4 @ line no.1). This is clearly a case of putting words in Tina's mouth.

I also argue that not only did the prosecutor commit improper vouching to the jury, but also to the trial judge. While the Judge should be somewhat immune to these acts, there must be some limit that constitutes prejudice and a unfair trial. I argue that when the prosecutor doesn't just "spin" the facts, but flat out lies to the court...this limit has been exceeded. The following lines from the Trial Transcript (T.T.) make my point:

- 1.) T.T. page no.289 @ line no.23.) "He's making this up...This is a story...I really hope the court can see through this right now. And ...and I'm sorry for raising my voice..."
- 2.) T.T. page no.294 @ line no.1.) "I want the court to be clear, your honor I specifically asked her that question as a officer of the court. I asked...and I want the...I...I...know I can't speak for her, but she could change her mind tomarrow...but okay."
- 3.) T.T. page no.319 @ line no.22.) "He's fabricating evidence and trying to delay this trial."

The Trial Transcript shows that every one of these statements become a proven lie. To make matters worse, it becomes evident that the prosecutor knew or should have known that these statements were untrue.

Exhibit "G" is the "Interview Transcript" taken by the "Shelton Police Department". On page no.7 at line no.10 Tina says: "...He had me take him to the AM/PM and then back to his house.". However; just a few lines down at line no.25 Tina say's; "And then he...Jasmine Palma picked him up from the parking lot then. He met Jasmine Palma.". These two statements are totally incongruous to any form of logic. Either Tina took me home after going to the AM/PM or Jasnine picked me up at the AM/PM!!! The state told the second version at trial, but Exhibit "B" clearly proves that version was nothing but a lie designed to invoke sympathy with the 9 woman jury.

ISSUE No.#5-Con't.

ISSUE No.#5-Con't.

~~I think~~ the following case not only illuminates the logic of the prejudice I suffered...it shows how the conduct of Mr.Bickerton was even worse than the conduct of the proscutor in the case below.

State v. Reynolds:C.O.A. Div.3(April10th.,2012)(no.29737-3-~~III~~) (LEXIS 836) To pervail on a claim of prosecutorial misconduct, the defendant must establish that the prosecutor's conduct was both improper and prejudicial in the context of the entire record and circumstances at trial." State v. Thorgerson;172 Wn. 2d. 438,442,258 P.3d. 43 (2011) (quoting State v. Magers:164 Wn. 2d. 174,191,189 P.3d. 126.(2008)"A prosecutor, like any other attorney, has a duty of candor toward the tribunal which precludes it from making a false statement of material fact or law to such tribunal." State v. Talley;134 Wn. 2d.176,183 n.6. 949 P.2d. 358 (1998) (quoting State v. Coppin 57 Wn. App. 866,874,n.4. 791 P. 2d. 228 (1990)).

At this point there can be no doubt that Mr.Bickerton committed prosecutorial misconduct that requires a new trial or dismissal of my conviction.

ISSUE No.#6-THE STATE FAILED TO SHOW NOT ONLY SUFFICIENT EVIDENCE FOR  
FOR A CONVICTION,BUT THERE WAS NOT EVEN ENOUGH EVIDENCE FOR A ARREST:

I argue that the State of Washington does have some minimums that law enforcement must have before effecting an arrest. First; There must be a stable credible victim. Second; There must be some kind of independant verifiable evidence or some kind of proof that is clear, cogent and convincing. California courts have a rule called;"803§(f)(2)(c)",and requires,"independent evidence,that corroborates the victim's allegation." See the case of:Chaves v. Clark;U.S. Dist. Court Of The 9th.Circuit.(Lexis 27994)(Feb.3rd.,2012). Research shows that this rule is based on the U.S. Constitution and should apply to all state court cases. To illuminate my point: Merriman v. Walton;856 F. 2d. 1333, "Holding that officers cannot reasonably rely on one witnesses allegations."

It is axiomatic that the standard for a finding of guilt must be higher in a criminal case than it is in a civil case. To make my point I give you:

Randal Dock On Behalf Of Jasminh Young-Dock,Plaintiff v.s. Melinda Marie Young;U.S. Dist. Court For Dist. Of Nevada,(Lexis 1449) 2:10-CV-00967-PMP-PAL(Jan.3rd.2013)(Lexis113548)"The exhibits introduced at trial can be interpreted to favior the position of the plaintiff or the Defendants,but the testimony of only one witness presented at trial is simply insufficient to enable the court to determine that plaintiff's claims are more probably true,than not true. As a result,the court concludes plaintiff has failed to sustain his burden of proof, and further has failed to establish that this court has jurisdiction to consider his claims under 42 U.S.C.§ 1983.(2013 U.S. Dist. Lexis 6 ).

In my case how could my jury make a legal decssion that a legally trained court could not? Remember what officer Paulsen said in the (T.T.) on page no.272 line no.1;"Q.) So...so as far as your investigation goes there really was no investigation. All you did was take a statement... correct? A.) The interviews were my investigation...YES." So here the State admits that one of the two prongs necessary for a lawfull conviction is compleetly missing from its case. However; I argue they are missing the other prong as well...a stable credible witness and victim. At my trial Tina tells a story about her dogs. On page no. 185 from line no.1 to line no.20 she tells the jury how she is currently being stalked by "Michael Dominguez"and how he put epoxy up the dog's rectums no less than 50 times! Problem here is: On page 184 of the (T.T.)@ line no. 1 she says her stalker is "Steve Dominguez"...Michael Dominguez's brother!!!

This misidentification is never corrected by anyone...not even Tina? More-over; on the same page@line no.8 you get:

ISSUE No.#6-Con't.

A.) Well, you get P.T.S.D.--it's actually complex post traumatic stress disorder. If you have childhood trauma, and then you're exposed to trauma as an adult, then it's complex P.T.S.D. So the symptoms are a little bit more severe, yeah.

Then on page no. 334 of the Trial Transcript @ line no.8 you get : "Mason General Hospital and the clinics told me I had a psychiatric issues and that I was wrong about thinking I've been abused and exposed to toxins, and told me I needed to leave; that they would not treat me for any physical issues untill I see a psychiatric doctor first. Then the only thing I'm left to believe is I could be wrong about Richard hurting me. I need the attorney's number. I cannot make it to court untill tomorrow."

Exhibit"F" is information provided by psychologist David Hosier; and page 1 says:"...a diagnosis for P.T.S.D. does not derive from self-diagnosis but instead comes from a relevantly qualified professional such as a trained psychiatrist. His information goes on to say:"It wasn't untill later through months of therapy that his diagnosis earned the "complex prefix". The article says; P.T.S.D. hallucinations are often compared to those associated with Schizophrenia. This article does not even address what is known as drug induced psychosis from methamphetamine. However;the state and the trial court prevented my attorney from asking any questions about this despite the fact I had two witness ready and able to testify about Tina's drug use.

If Tina can claim she has complex P.T.S.D. without ever having seen a mental health professional to make a diagnosis...then my two witnesses should have been allowed to testify about Tina's drug use. The state hid Tina's drug use from the jury. Trial Transcript page 393 @ line no.20.) "You get Tina Gumm's:Erratic behavior, and drug use,propensity to fabricate and misrepresent facts, text messages and changing stories surrounding the alleged facts in the current case." Then on page no.394 @ Line no.4.)" The examples given;Erratic behavior, drug use, propensity to fabricate facts and prostitution.". As life long dog owner and breeder I can assure this court that it is highly unlikely that a dog could survive having epoxy put down its throat or up its rectum more than once or twice let alone 50 times!!! If all the people on my jury never owned a dog or only had little experience with them, they could not help but feel sorry for Tina and her dogs.

Moreover; Shelton is a small town. One or more of the jurors may have known that Steve Dominguez and Michael Dominguez are brothers. Further; after hearing that law enforcement won't help her get proper legal assistance

ISSUE No.#6-Con't.

Further; after hearing that law enforcement won't help her get proper legal assistance regarding Steve, Michael, and her dogs...some of my jurors might have felt compelled to convict me in order to help Tina with these issues. In my case the jury saw a orchestrated fraud that did not have a single piece of independant or verrifiabile evidence. I argue the "logic" in one case must be comencerate with all other simular cases. While not exactly on point...the application of logic should be simular. These cases show how the State was relieved of its burden and my contitutionally protected rights. The State was relieved meeting both prongs that were required in order to secure a legal conviction in this case. This case law illuminates my points:

In re the Detention of Nicholas; C.O.A. Div.2 (1999) wash. app. (Lexis 874) case no. 23018-6-2, May 14th., 1999  
"Nicholas also challenges the constitutionally of R.C.W. 71.09, Claiming it imposes a lesser burden of proof upon the state than that required under: Addington v. Texas; 441 U.S. 418, 428 99 S. Ct. 1804, 60 L Ed. 2d. 323(1979)"

In re Mc Laughlin; 106 wn. 2d. 832, 676 P.2d. 444(1984)  
"...due process requires clear, cogent, and convincing evidence before a deprivation of liberty can take place in a civil commitment proceeding".

In Corey v. Pierce County; C.O.A. 154 wn. App. 752, (Nov.12th.2009). "Rolph says only that conflicting, uncorroborated testimony does not satisfy the clear, cogent, and convincing standard." 20 wn. App. at 256.

Rolph v. Mc Gowan; 20 wn. App. 251(May 30th, 1978)  
"The clear, cogent and convincing standard does not require that the plaintiff's proof be uncontradicted. Noord v. Downs 51 Wn. 2d. 611, 615, 320 P. 2d. 632 (1958). However; the standard is not met where the only evidence consists of uncorroborated conflicting testimony by the parties. see: In re dependency of A.M.; 12 Wn. App. 2d. 1, 106 Wn. App. 123.

Joseph F. Stiley v. Edward Block; S.C. of Wash., 130 Wn. 2d. 486, 925 P. 2d. 194, (1996) Lexis 627 cause no. 63218-9(Oct.24th., 1996)"While there was some evidence to justify submitting the issue of fraud to the jury, the Court Of Appeals correctly appraised the scarcity of evidence to support a conclusion of fraud under the clear, cogent and convincing evidence standard",

Bradley v. New York City; U.S. Dist. Court 2nd. cir. (May 4th.2009)"recognizing officers duty to conduct a reasonably thorough investigation prior to arresting a suspect in the absence of exigent circumstances."  
"Under these circumstances there is no probable cause."

ISSUE No.#6-Con't.

Fuller v. M.G. Jewelry;U.S. C.O.A. 9th. cir.(1990)  
950 F. 2d. 1437,(1991)Lexis 28740, Daily Journal DAR 15192  
"...we concluded that police officers had a duty to inquire further before arresting a individual for kidnapping".

Jackson v. Virginia; 443 U.S. 307,316 99 S. Ct. 2781  
61 L Ed. 2d. 560 (1979) "The constitution requires that a criminal conviction be supported by sufficient proof... defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense".

In the matter of the Dependency of A.M. Teanna Applebee v.Dept. of Social and Health Seervices; C.O.A. Div.1, 106 Wn. App.123, 22 P. 3d. 828,(2001)Lexis 954(no.46486-8-1) May 7th.2001,"rather than clear,cogent,and convincing evidence."

Diana Seminara,Plaintiff Appellant v.s. City Of Long Beach,Roy Hainley and Joseph Lembi,Defendants-Appellees  
"...officers were on notice of a lack of probable cause and under a duty to investigate more thoroughly before arresting her without a warrent.". See Merriman v, Walton; 856 F. 2d. 1333,1335(9th.cir.1988) cert. denied,491 U.S. 905,105 L Ed. 2d. 696,109 S. Ct. 3188 (1989) Holding that officers cannot reasonably rely on one witnesses allegations in making a arrest without conducting further investigation to corroborate those allegations. Ripson v.s. Alles; 21 F. 3d. 805, 808(8th. cir. 1994)

State v. Rich; S.C. of Wash,184 Wn. 2d. 897,(Nov.12th.2015)  
"...A modicum of evidence does not meet this standard."  
Jackson;443 U.S. at 320.

They say actions speak louder than words...If that is true, Tina's actions after the alleged event have a lot to say. However; in psychology there is a state called a "Tell". In this case Tina feels under attack about an event where Tina and I had been talking. On page no.240 @ line no.80she says;"I don't recall. I'm sure he could tell you." Here she is trying to rationalize her behavior to my attorney and her first thought is to have me be her witness in my prosecution! Her first thought was to call on me to rescue her!!! I think this "Tell" says more than all the words found in the Trial Transcript. None-the-less; it contains the following:

Page 240 @ Line no.6;"Q. When did you go to the Turning Point with him?"

Page 240 @ Line no.7;"A. Within a couple of days of that 'cause see...at first we talked...I don't...I don't recall. I'm sure he could tell you. I'd have to look at my phone, I don't recall. But yeah, he...he showed me where Jasmine ran into my car."

Page 240 @ Line no.11;"Q. Okay. You were there on another occasion to pick up some plants?" "A.)Ms.Gumm: Yes."

ISSUE No.#6-Con't.

Page 240 @ Line no.16;"Q. And Richard went with you and assisted in that is that correct?"

"A. Yeah."

Page 244 @ Line no.12,"Q. When you went with Richard to the...to check on the plants at Turning Point, was that the same time that you went there about the car?"

"A. No."

"Q. And then when you arrived, was the car there?"

"A. Yes."

In the end;despite Exhibit "B", Tina's own words and actions prove that not only is there a total lack of clear evidence that a offensive assault ever happend to support a conviction,but rather that it was more likely that any kind of assault **NEVER HAPPEND!** Once you allow unreasonable behavior to be used to support a conviction...You set yourself up for strained,unusal and absurd outcomes of the law. Tina's actions were very simular to the actions of the woman in the following case:

Marina Pickett Plaintiff v.s. The Colonel Of Spearfish and Tim Morris;U.S. Dist. Court Of South Dakota,Western Div. 209 F. supp. 2d. 999, Lexis 24233 (CIV.99-5106), Aug. 24th.2001

" Under a totality of the circumstances view a one time kiss is not "severe and pervasive conduct" that alters the condition of employment." And "...firmly demonstrates that the alleged conduct was not serious enough to be actionable under Title VII."

ISSUE No.#7-MR. GEAN AUSTIN WAS ONLY 38% EFFECTIVE AS A DEFENSE COUNSEL  
ATTORNEY RESULTING IN 62% INNOFECTIVE ASSISTANCE OF COUNSEL.

Determining the percentage of effective assistance that Mr. Austin provided at my trial was ~~garatherneasy~~ <sup>rather a</sup> ~~matter~~, A simple algorithm will get you close to this number. However; by adding a few other parameters, you can subjectively arrive at 62%. For example; you can add up the total amount of time everyone spoke that actually helped the defense, against the time Mr. Austin did...minus all the time he spoke against the defense!!!

Peater Jones, lesley Ellerbrock, Mr. Bickerton (The Prosecutor), The Judge, and myself, all made statements that promoted my defense. It should be noted at no time did Mr. Austin tell the court that he would like this cast of characters to speak for him, or attempt to stop anything they said. In short; either from incompetence, dumb luck, desperation, or sympathy at one time or another, they all were compelled to speak for the defense.

This court does not need to dig through the trial record to find the atrocities committed by Mr. Austin...All it needs to do is close its eyes, and thumb through the record and pick a page to find an example of representation that the State would not pay for if, it was in my shoes.

The succinct words of the State prosecutor, who was there, clearly states this issue. Trial Transcript page no. 175 @ line no. 4.) "Now we... You have a Defendant sitting here writing notes to his attorney, and the attorney doesn't know what's going on... And that is causing a lot of confusion. It's obvious they don't even know what the other is doing...they, re not even on the same page here. His attorney is not prepared! So how can a attorney ask a witness a relevant question?" IN THE STATES ANSWER TO MY MOTION FOR APPEAL ON PAGES 2,3,4,5,6, AND 7 HE PREACHES THE PRAISES AND VIRTUES OF MR. AUSTIN... SO I ONLY HAVE ONE QUESTION...WHICH TIME WAS HE LYING??? The time of 7:30 a.m. is a major material fact that was never properly put before the jury. The state realized that he screwed up on this issue and put this material fact in Tina's mouth. Trial Transcript page no. 386 @ Line no. 4.) "Your testimony was on the 18th., around 7:30 a.m. you woke up, were you wrong about that? To wich Tina is compelled to say: "No". At this point you might think my attorney Gean Austin would object to this conduct by the state...but he's so "spaced-out" he does not have any idea how important this issue is to the over all case! He does not even ask for a objection. Infact; he still has not figured out the Time-Line of the case at Trial Transcript page no. 469, practically the

ISSUE No.#7-Con't.

-end of the trial! T.T. Pg.469 @ line no.18.)"And that she... sometime during that period between that and 7:30 a.m. or 9:00 a.m....9:00 a.m. "she fell asleep"...". So here is my attorney totally messing up the facts like a drunk'n sailor trying to teach a advanced math class. He is litterly messing up the arguements involving EXHIBIT "B"...The photo that proves Tina and I went back to my house after going to the AM/PM and totally refutes the naritive that she only got away from me there, because of a chance meeting with "Jasmine Palma". Infact; the way Tina tells it, she makes it sound like she narrowly excaped a kidnaping, or some kind of unlawful detainment. While the following incidents individually may not rise to ineffective assistance of counsel, they would no doubt be used by a movie director, if a movie was ever made of my trial. For example: Austin; who is forever helpful to the prosecution has the following exchange: T.T. Pg. no. 268 @ line no.12 (It was implied to officer Paulsen-beyond the name Richard Pleshner,who are you talking about?) Suddenly: Austin says;" Perhaps you could clarify who..." And is followed up with: " There's two of us here...". However; this " foo-pah" was exceeded by the following indignity: T.T. Pg.256 @ line no. 16;

Q.) And what is your opinion of Mr.Pleshner?

A.)He's repulsive.

BICKERTON: Thank You...No further questions.

At this point Austin obviously thinks the jurorist who had been at the edge of their chairs may not have heard this last insult so he says:

AUSTIN: Excuse me...I couldn't hear that last response.

A.) I SAID HE'S REPULSIVE!!!

You could say the above events only prove why other defendants call him a "Dump Truck" or "Truck" of a attorney. ( A refferance to the fact that the prison W.C.C. is next to the Shelton City Dump, and his representation will amount to you being treated and delt with like garbage.)

However; the same cannot be said of the following violations that resulted in the totally unconstitutional trial, that I had. Because; there are so many violations and I have so many case laws that apply to more than a few of these issues, I will provide the case law first:

" Strickland v.s. Washington:S.C. of the U.S.(466 U.S. 668) May14th. 1984;"Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendent,and hence owes a duty of loyalty,(and) a duty to avoid conflicts of interest. From counsel's function as assistant to the defendant he should derive the over-arching-  
 ~~duty to the defendant~~

ISSUE No.#7-Con't.

-duty to advocate the defendant's cause and more particular he has a duty to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as to render the trial a reliable adversarial testing process. see:Powell v. Alabama;287 U.S. @ 68-69, 53 S. Ct. @ 63-64."

Groseclose v.s. Bell;130 F. 3d. 1161,1169-70(6th. cir.1997)  
"Describing defense counsel's failure to have any theory what so ever and failure to conduct any meaningful adversarial challenge is especially appalling." And "...but Brackstone's decision to simply follow the lead of Rickman's court appointed counsel was an exceptionally egregious decision for Groseclose's fortunes, given the extraordinary tactics employed by that gentleman. First, Rickman's attorney was not the model of preparation, He did not interview any witnesses, conduct any legal research,or obtain and review any records." And " Moreover; he waived his opening statement---a decision that Groseclose's expert witness in this habeas proceeding termed"remarkable"."

Barkell v.s. Crouse;468 F. 3d. 684(10th. cir. 2006)  
"Counsel's failure to investigate was deficient performance in prosecution for sexual assault where records existed evidencing child's propensity for lying."

United states v.s. Tucker;716 F. 2d. 576,585-87(9th. cir.1983)  
" Counsel's failure to impeach witness with prior inconsistent statements was ineffective assistance."

U.S. v.s. Butler;504 F. 2d. 220,224 (D.C. Cir. 1974)  
" Failure to impeach witness with inconsistent pre-trial testimony was ineffective assistance."

Thomas v.s. Lockhart:738 F. 2d. 304,308 (8th. cir. 1984)  
" Investigation consisting solely of what a reasonably competent attorney would have done."

This forgoing case law will not only apply to the following excerpts of the Trial Transcript I have slected but I want to also use them for the issues of:HOW AUSTIN FAILED TO USE EXHIBITS "B" AND "G" TO IMPEACH TINA. HOW AUSTIN REFUSED TO WORK WITH ME ON ANY PLAN OR STRATEGY, HE DID NOT EVEN WANT TO ASK ABOUT THE NOTE PLACED ON MY DOOR BY TINA!!! HE REFUSED TO MAKE A OPENING STATEMENT AND SHOW TINA HAD A PROPENSITY FOR LYING DUE TO MENTAL HEALTH ISSUES. HE DIDN'T EVEN TRY TO GET VIDEO'S FROM THE AM/PM.

ISSUE No.#7-Con't.

ProAustin is determined not to call Jasmine Palma as a witness:  
T.T. Pg.30@line No.2 "I wasn't expecting her to be here."  
T.T. Pg.29@line No.21 "...but if she's going to testify, we would like to  
add her to the witness list."  
T.T. Pg.28@line No.4 "Are you here as a witness? Palma: "Yes; sir".  
T.T. Pg.59@line No.15 "...just to call Jasmine so she can just take the  
5th. , that's all that would happed."  
Jasmine's attorney agrees I would want to call Jasmine as a witness:  
T.T, Pg.62@line No.24 "...And so I see where there may be some relevance  
there."

Peater Jones; Jasmine's attorney runs my defense and trys to expose  
my trial strategy to the prosecution.  
T.T Pg.63@line No.8 "...I'd rether have that decision made now rather than  
in the middle of trial..."

I am clearly representing myself at this point:  
T.T. Pg.69@line No.12 "...and I'm not disagreeing with you."  
Austin refuses to use Jasmine to impeach Tina...or use her at all.  
T.T. Pg.98@line No.8 "I told Pleshner I will not make that arguement at  
this time..."

Austin refuses to look up any case law to help me...notice the use  
of the word "maybe" that he tells the Judge.  
T.T Pg.86@line No.9 "I would have to look at some case law to "maybe" answer  
him..." (he has been refusing to look anything for me  
for weeks and now we only have hours!!!)

HERE:AUSTIN IS BLACKMAILING ME RIGHT INFRONT OF THE JUDGE

Trial Transcript Page No.110 At Line No,#2:

---

"He has to decide whether he wants to proceed Pro-Se, or  
you know, allow me to proceed the way it is..."

---

I DO NOT KNOW ALL THE LEGAL TERMS OR ~~CON~~STITUTIONAL VIOLATIONS  
THIS CONDUCT IS CALLED...BUT YOU CAN'T POSSIABLY PROUDLY CALL IT...  
"AMERICAN "

ISSUE No.#8-THE TRIAL JUDGE COMMITTED ABUSE OF DISCRETION:

The Trial Transcript(T.T.) makes it clear that Mr.Austin and I had a irreconcilable differance long before the jury was impaneled and the court knew it!) It was clearly a abuse of decession to let the case drag on any farther once that fact became clear to the court. On page 115 of the (T.T.) @ line no.8 the court makes it clear it knows there is a irreconcilable issue.) The Court:"Even if we have a irreconcilable issue...conflict,as it relates to this witness testifying, does that affect your ability to represent Mr.Pleshner through voidire and the state's initial witness in this case?". While this statement might not be clear enough for some...However; my attorney really drives the point home in (T.T.) page 115 @ line no.18.)"I don't think we're going to be able to proceed at...in a trial setting because we're working towards different ends. And he...and he doesn't agree with...with those ends and goals."[sic.]. It is well settled case law that it is the providence of defense counsel to decide trial tactics and strategy. None-the-less it is the providence of the defendant to decide"goals" and "objectives".

The court actually knew there was a problem long before this! The Trial Transcript on page 56 @ line no.5 gives you: Mr.Austin say's; "I'de like...your honor,before we get to that Mr.Pleshner wishes to make a motion to replace me as counsel at this time. He feels he would be better suited with...with someone else. And so before we get to the issue of the witness,I'm bringing that to the court's attention.".

They say experance makes one wise and the judge had a duty to forsee the total breakdown that happends @ page 413 of the (T.T.) @ line no.1.)"I want it noted that I really object to the fact that one witness didn't get called that wanted to testify...my lawer didn't... quantify with you...more clearly what you're limiting her...testimony to."

Even the prosecutor saw the light from the on comming train and had something to say about the issue. Page 177 of the (T.T.) @line no.14.)gives you;"There's no mistrial at this stage right now,as far as I believe...I may be wrong,but I don't believe because a jury has not actually been impaneled.". The record shows there was absolutely no -

ISSUE No.#8-Con't.

-reason for the trial judge not to appoint new counsel and allow a small continuance. The forgoing clearly proves my rights to a fair trial were violated.

IN CONCLUSION:

) For the reasons discribed above, this court should reverse my convictions or dismiss my case.

DECLARATION:

I Richard Pleshner do hear by declare that exhibit "B" is a true and accurate picture of Tina Gumm waiting for the woman's shelter to open.

The time stamp is correct and the picture was taken at 8:23 a.m. on september 18th., 2019. The picture was taken by me AFTER WE CAME BACK FROM THE AM/PM. Regardless of what you believe happend before breakfast at my house the photo shows she is clearly unaffected by the events of that morning!!!

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at: M.C.C. / T.R.U., City of: MONROE Washington on: 8/2/2021

Rich Pleshner  
By Richard Pleshner

# Exhibits

"A"

1 THROUGH 2

IN THE SUPERIOR court in and  
For MASON county, State of Washington.  
(Heard on October 4<sup>th</sup>, 2019)

Rich Plechner } Motion for 4  
v.s. } hour Delay.  
STATE of Washington } (Pre-se) Rich Plechner

- 1.) I have a video on my Phone that shows that Tina Gumm is selling Meth to Jasmine Palma (who is out on bail from this court) And is trying to black mail Jasmine into giving false Testimony for her in her Up coming Grand theft Auto charge (Tina knows I told Jasmine not to do it!) (I want the Prosecutor to see <sup>the</sup> video)
- 2.) 6 months ago; I wrote a Statement for Joshua and Lesley Ellerbrock so they could get a No contact order Against Tina. I Lived with the Ellerborks at that time...and Tina was mad at me the most because the Court relied on my Statement...and They got the order Granted. (I believe Tina violated the order <sup>on said</sup> day.)
- 3.) A few days ago, I was forced to contact Law Enforcement, because "Tina" flipped out at Jasmine's House. (She was detained and mad!)

4.) 2 days Ago I was forced to contact Law Enforcement because, "Tina Gumm" was "Felony Trasspassing" at Jasmine & Palma's House.

5.) Tina knows I have a big case coming up this Monday in Superior Court where I'm fighting for the Legal owner Ship of my house... obviously if I'm not there... I will Lose my home, Tina is a X-Prostitute, and is doing this for revenge and knows what she is doing and how to work the system. For these reasons and the public good; I Ask for the delay So the Prosecutor can agree to a P.R. or dismissal of this case in a few hours or Sooner. The Risk to me is great, and the risk to the public is Low, if this motion is Granted. The timing of this was no accident!

Respectfully Submitted by:  
Rich Pleshner 10-4-19  
(Pro-Se)

Exhibit

" "

B

  
" ONE PHOTO "

Exhibit "B"

Sprint LTE

12:26 PM

94%



Shelton

September 18, 2019 8:23 AM

Edit

Look!!!



# Exhibits

" C "

~~THROTTLE~~

ONE PAGE - DISMISSAL OF TINA  
Gumm's G.T.A. Charge.

Nag

EXHIBIT C

RECEIVED & FILED  
Mason County Clerk

MAR - 8 2021

Superior Court of WA  
Sharon Fogo

MASON COUNTY SUPERIOR COURT  
STATE OF WASHINGTON

19-1-00229-23  
ORDSMWO 47  
Order of Dismissal Without Prejudice  
9904436

State of Washington, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Tina M. Gumm )  
 )  
Defendant. )  
 )

Cause No. 19-1-229-23

MOTION AND ORDER OF DISMISSAL  
WITHOUT PREJUDICE, TERMINATING  
CONDITIONS OF RELEASE, AND  
EXONERATING BAIL BOND

I. MOTION

The State moves this court for an Order of Dismissal for the above-referenced case only.

II. ORDER

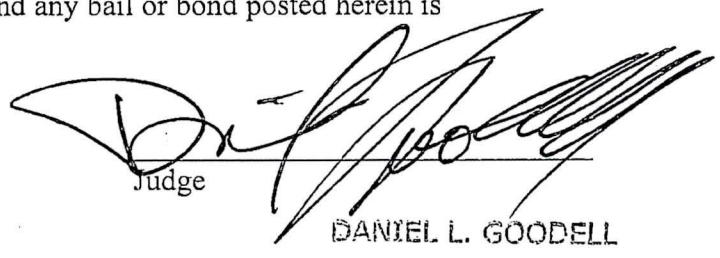
The State having made a motion for an order of dismissal as to the charge herein, now, therefore, it is

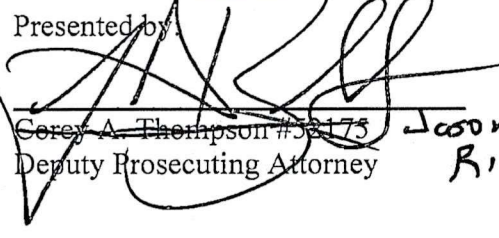
Tina M. Gumm

ORDERED, that the above-captioned matter as to the defendant, ~~Tina M. Gumm~~, be and it hereby is dismissed without prejudice with 31 days remaining until time for trial expires. And it is further

ORDERED, that the above-captioned defendant is released from all conditions of pretrial release ordered herein under this cause-number, and any bail or bond posted herein is exonerated.

DATED 8 March, 2021

  
Judge  
DANIEL L. GOODELL

Presented by  
  
Corey A. Thompson #58175  
Deputy Prosecuting Attorney  
Jason Richards

47

# Exhibits

" " **D**

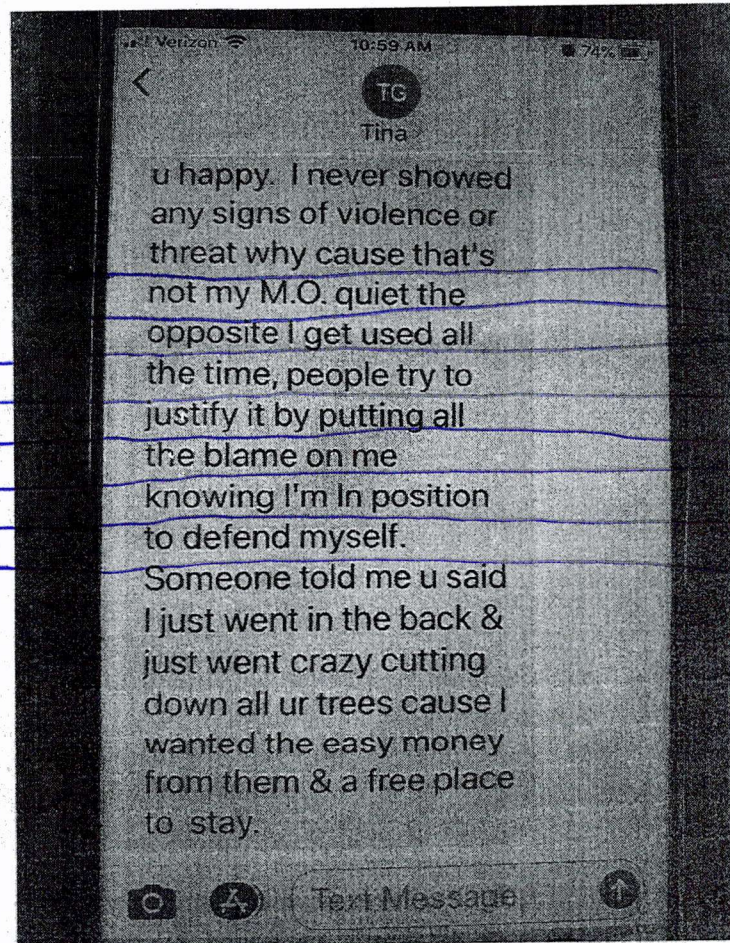
1 THROUGH 3

NOTE: 3 Pages of Text Messages  
By TINA Gumm Showing She  
(had, or thought she had) a Pending  
Second Degree Trasspassing Charge  
Pending.

Exhibit "D"

Text Sent by Tina Gum... Monday, October 7<sup>th</sup>, 2019  
@ 1:59 P.M.

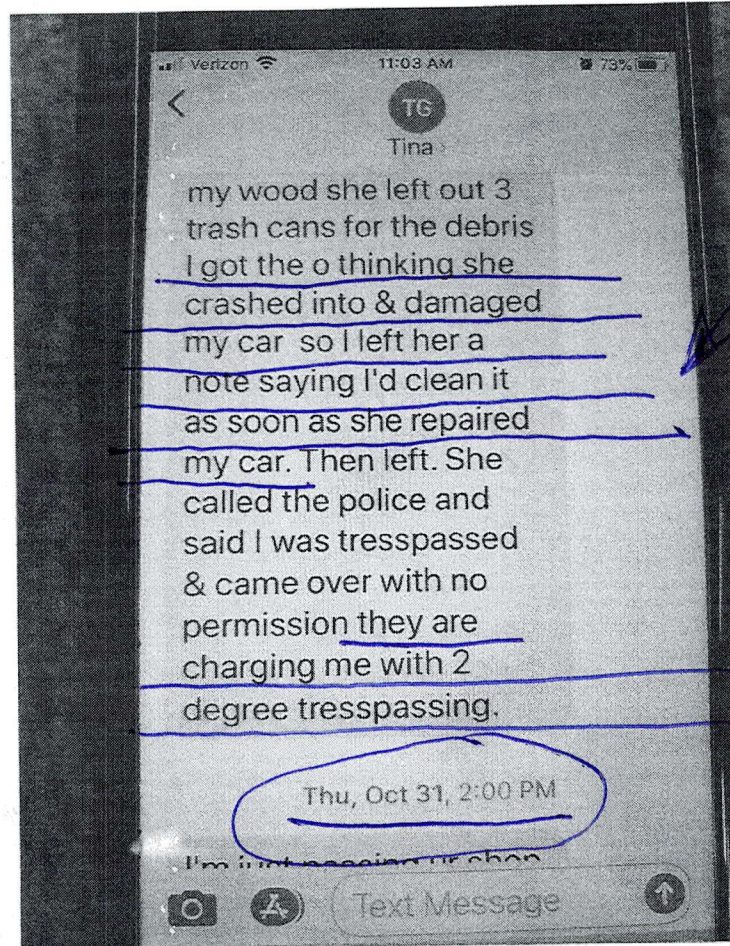
(15)



She will say  
whatever it takes  
to "win" or get  
her way!

Text of Tina Gum... Sent Thursday, October 31, 2019  
@ 2:00 P.M.

(29)



First time she  
blackmailed Jasmine  
Palma!!!

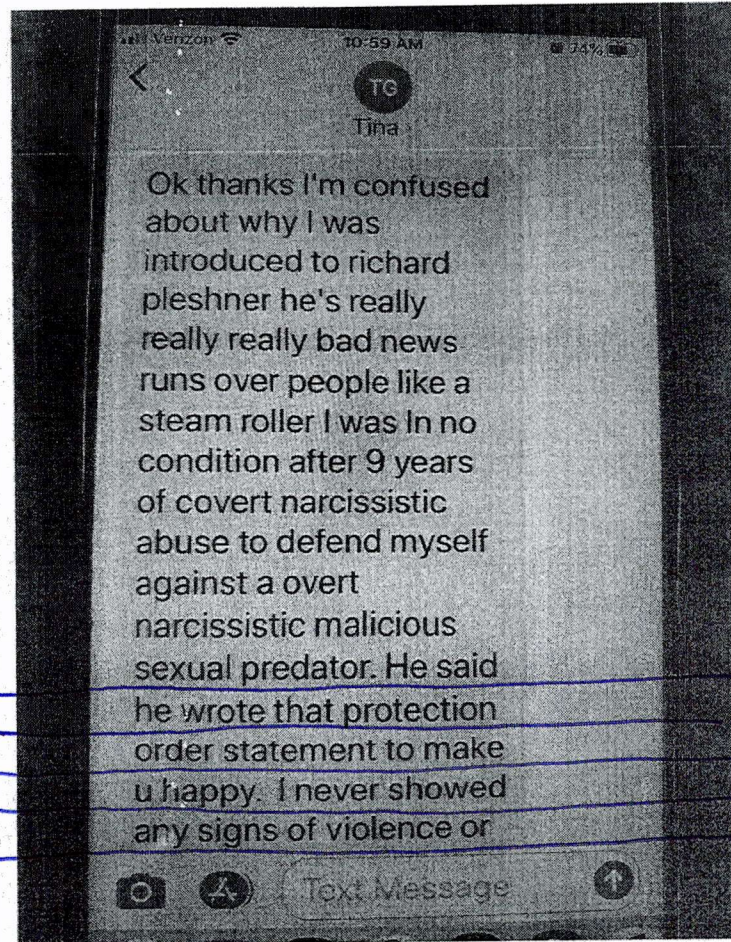
My Attorney was  
not allowed to ask  
about this!!!

MB

Exhibit D  
Text Sent by Tina Gum... Monday, October 7<sup>th</sup>  
2019 @ 1:59 P.M.

(14)

This text  
was sent  
Monday, Oct 7<sup>th</sup>

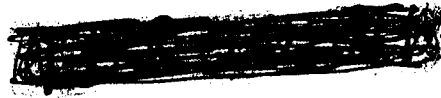


So she did know  
I wrote a statement  
for the Ellerbracks.

# Exhibit

" "

E



NOTE: NOTE WRITTEN BY "TINA GUM"  
Left ON MY DOOR.

HAVE YOUR  
ATTORNEY PUT  
TENN BACK ON  
+ STAND HAVE  
HIM ASK HER  
QUESTION. ASK HER  
IF SHE BELIEVES  
THERE IS A CHANCE  
SHE COULD BE WRONG  
ABOUT WHAT HAPPENED  
IT WILL WORK

# Exhibits

"**F**"

1 THROUGH 2

NOTE: P.T.S.D. INFORMATION.

SEARCH FOR WHAT'S IMPORTANT TO YOU

Search this website

## Real Life Experiences - Real Answers - (C)PTSD

HOME ABOUT PTSD WIFEY AWARDS RECOVERY PTSD BASICS FEATURED AUTHORS SHOP

recent pages PTSD Wifey Home • about PTSD • PTSD Hallucinations: Audio And Visual

### PTSD Hallucinations: Audio And Visual

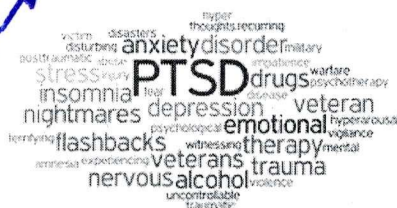
May 14, 2017 by PTSD Wifey — 3 Comments

Love it? Share it!



Were you aware that Post Traumatic Stress Disorder (PTSD) and Complex PTSD (CPTSD) involves some extreme symptoms? The week of May 1st. through Mother's day marks the anniversary of my husband's two-week psychosis episode two years ago. That two weeks marked finalization of his diagnosis that we all know too well, that of PTSD. It wasn't until later through months of therapy that his diagnosis earned the "Complex" prefix.

Look! →



PTSD Relapse

It isn't uncommon for a PTSD survivor to experience a relapse near the anniversary of their trauma. In the same light, a relapse can be triggered by one's body or mind remembering such traumatic events. Therefore, in my husband's case, the anniversary of his complete psychosis sends him spiraling backwards. Despite of his progress regarding remission of symptoms. That being said, he has had 11 straight days of PTSD Hallucinations. Audio and visual hallucinations (AVH) are PTSD's most severe symptom. PTSD hallucinations are often compared to those associated with schizophrenia.

Our website uses cookies

This website uses cookies to improve your experience. We'll assume you're ok with this, but you can opt-out if you wish. [Cookie settings](#) [ACCEPT](#)

## Childhood Trauma Recovery

Over 800 free articles by psychologist and childhood trauma survivor David Hosier MSc on effects of childhood trauma on mental health, therapies, self-help and related topics

[ABOUT](#)
[ALL 800 FREE ARTICLES](#)
[EBOOKS](#)
[CATEGORIES](#)
[USEFUL LINKS FOR RECOVERY FROM CHILDHOOD TRAUMA](#)
[CONTACT](#)
[PRIVACY POLICY](#)
[Search Over 800 Articles](#)


## PTSD CHECKLIST

November 16, 2018 7:14 am · [Leave a Comment](#) · David Hosier BSc Hons; MSc; PGDE(FAHE)

☒ PTSD symptom categories

Those of us who experienced high levels of stress as children are at increased risk of developing PTSD.

Whilst it is imperative that a diagnosis for PTSD does NOT derive from self-diagnosis but, instead, comes from a relevantly qualified professional (such as a psychiatrist), the symptoms I list below in a PTSD checklist can give an idea of whether or not one may be suffering from it:

These can be split up into three main PTSD symptom categories as follows below:

- 1) Symptoms related to avoidance behavior
- 2) Symptoms related to re-living/ re-experiencing the traumatic events
- 3) Symptoms related to a person's biology/physiology/level of physical arousal.

Let's look at each of these three specific categories of possible PTSD symptoms in turn:

### 1) Symptoms related to avoidance behavior :

- avoidance of anything that triggers memories of the traumatic experiences, including people, events, and places
- avoiding people connected to the trauma, or avoiding people in general
- avoidance of talking about one's traumatic experiences
- avoidance of intimacy (both physical and emotional)

### 2) Symptoms related re-living/ re-experiencing the traumatic events :

- nightmares

- This website uses cookies to improve your experience. We'll assume you're ok with this, but you can opt-out if you wish.

- flashbacks

[Cookie settings](#)
[ACCEPT](#)

How Childhood Trauma Can Physically Damage The Developing Brain (And How These Effects Can Be Reversed).

Revised And Expanded 2019 Edition.  
David Hosier MSc

## CATEGORIES

Select Category

## Trending Posts

Fight, Flight, Freeze or Fawn? Trauma Responses

4 Types Of Borderline Mother: Witch, Hermit, Waif And Queen.

Effects Of Repressed Anger Towards Parents

The Long-Term Effects of Parental Rejection

Emotionally Immature Parents: Effects On Their Children.

# Exhibits

"**G**"

1 THROUGH 11

NOTE: Police Interview of Tina Gumm

Exhibit "G"

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TRANSCRIPT

10/3/2019 - Interview of Tina Gumm

Participants:

OFFICER PAULSON, Shelton Police Department  
TINA GUMM

Carolyn Putvin, Authorized Transcriptionist  
MASON COUNTY SUPERIOR COURT  
P.O. Box X  
Shelton, WA 98584  
(360) 427-9670 ext. 289

1           OFFICER PAULSON:  Alright.  This interview will be in  
2 reference to Case No. 19-S as in Shelton, 11147, for a sex  
3 offense.  This will be the interview of last of Gumm, first of  
4 Tina, middle M, Marie, 5/3 of '71.  And Tina, can you confirm  
5 the spelling of your name for me please?

6           MS. GUMM:  T-I-N-A, M for Marie, and Gumm, G-U-M-M.

7           OFFICER PAULSON:  And can you confirm a good phone  
8 number and address for you?

9           MS. GUMM:  (360) 490-0994.  I don't currently have an  
10 address.

11          OFFICER PAULSON:  Okay.  Where do you receive your  
12 mail?

13          MS. GUMM:  General Delivery at the post office right  
14 here.

15          OFFICER PAULSON:  Okay.  And my name is Officer  
16 Paulson.  The date is October 3rd, 2019 and it's currently 1406  
17 hours.  And Tina, can you tell me what was going on that  
18 brought you in today?

19          MS. GUMM:  I - do you just want me to --

20          OFFICER PAULSON:  Yep, sorry.  I know you already  
21 told me, but --

22          MS. GUMM:  I had left the Turning Pointe domestic  
23 violence shelter on the 15th of September and I was staying in  
24 my truck, doing firewood, and I ran into Richard Plechner in  
25 front of New Directions on the morning of the 17th and he said

1 that Jasmine Palma had crashed into my car in the parking lot  
2 three times.

3 So, later that evening - well, late that evening I went  
4 over to Richard's house for him to tell me the rest of the  
5 story. And I had my two dogs with me and I sat on the end of  
6 his bed and - with my pajama pants on and my coat, and just  
7 leaned sideways and fell asleep, and I woke up to the feeling  
8 of breath on my ear and a grunt, grunting noise, and it was  
9 Richard. He had laid down beside me and had his hands in my  
10 pajama pants and his finger between my vaginal lips and he - I  
11 had - when I came to I shoved his arm off and jumped up out of  
12 the bed and reached down and grabbed my phones and my purse and  
13 opened the door and my dogs were right outside the door. So he  
14 had put my dogs outside while I was asleep. (And then I left.)

15 OFFICER PAULSON: Okay, and was Richard rubbing you  
16 at all when he had his hands down your pants?

17 MS. GUMM: Yes, he was.

18 OFFICER PAULSON: And he was in between your lowest  
19 level of clothing and your skin, correct?

20 MS. GUMM: Yes.

21 OFFICER PAULSON: Okay. And you and Richard have  
22 never had any other sexual encounters? You've never had  
23 consensual sex or anything like that?

24 MS. GUMM: Never. Never of any sort.

25 OFFICER PAULSON: Okay, and you didn't give him

Exhibit G-3

1 permission to do that?

2 MS. GUMM: Absolutely not, no.

3 OFFICER PAULSON: Okay. And could you feel if  
4 Richard had an erection behind you or not?

5 MS. GUMM: I, I'm not really sure, he's got a large  
6 belly, so I wouldn't know.

7 OFFICER PAULSON: Did - he was still clothed?

8 MS. GUMM: Yeah, I didn't lay there long enough to --

9 OFFICER PAULSON: Okay. But he had all of his  
10 clothes on --

11 MS. GUMM: Yeah.

12 OFFICER PAULSON: -- when you woke up?

13 MS. GUMM: Yeah.

14 OFFICER PAULSON: Okay. And were any of your clothes  
15 removed at all?

16 MS. GUMM: No. I just had some baggy pajama pants  
17 on, so.

18 OFFICER PAULSON: Okay. Okay. And when did you say  
19 this happened, the night --

20 MS. GUMM: It was the night of the 17th, early  
21 morning of the 18th.

22 OFFICER PAULSON: Okay. About what time, do you  
23 think?

24 MS. GUMM: I got there about 11:00 or 12:00. I'd  
25 have to look on Google Maps to know exactly. And I came to at

Look at Time!!!

Exhibit

G-2

1 about 7:30 in the morning.

2 OFFICER PAULSON: 7:30 when you woke up?

3 MS. GUMM: Yeah.

4 OFFICER PAULSON: About? Okay. And how do you know  
5 Richard Plechner?

6 MS. GUMM: I met him through people who own  
7 Huntington Glass. They're a friend of his.

8 OFFICER PAULSON: Okay.

9 MS. GUMM: So . . . Richard said most women would be  
10 - would appreciate, you know, him doing that and I was lucky  
11 that that's all he did since I was sleeping in his bed.

12 OFFICER PAULSON: Okay. When you woke up that's what  
13 he said to you?

14 MS. GUMM: Yes. Yep.

15 OFFICER PAULSON: Okay. And have you had contact  
16 with him since then?

17 MS. GUMM: Yes.

18 OFFICER PAULSON: And how has that been?

19 MS. GUMM: He's been over - I was staying with  
20 Jasmine Palma for a few days and he's been over there, so.

21 OFFICER PAULSON: Okay.

22 MS. GUMM: Yeah.

23 OFFICER PAULSON: Any altercations between the two of  
24 you or . . . ?

25 MS. GUMM: There was one the other night when I guess

1017-K

1 I was supposed to be at Jasmine's, inside the house by 10:00  
2 and I had been doing wood all day and was sitting in my car  
3 trying to connect a camera through the window and so she locked  
4 the door and when I rang the doorbell Richard came out and told  
5 me to sleep in my car, so.

6 OFFICER PAULSON: Okay.

7 MS. GUMM: And my dog was in the house, so I was  
8 trying to get my dog from him, and, you know, he's just so  
9 large and intimidating that, you know, I started yelling to  
10 back him away from me. And I was trying to get my dog, and so  
11 Jasmine and Richard called the police, so yeah.

12 OFFICER PAULSON: Okay. Were you able to get your  
13 dog?

14 MS. GUMM: Yeah. Yeah. Yeah.

15 OFFICER PAULSON: Okay. And is there a reason why  
16 you waited so long to report this -- today's October 3rd -- if  
17 it happened on the 17th?

18 MS. GUMM: I just had a hard time dealing with law  
19 enforcement the last several years because of my ex, Michael  
20 Dominguez, and they have treated me like I am fabricating some  
21 of it and they have never done anything about any of it, so I  
22 just have a hard time trusting that the police are gonna do  
23 anything about it.

24 OFFICER PAULSON: Okay, sure.

25 MS. GUMM: And it's always males I ended up talking

1 to and not females, so yeah.

2 OFFICER PAULSON: Okay. Anything else special that  
3 you think we should know about the investigation that would  
4 help us investigate it at all or anything about Richard  
5 particularly?

6 MS. GUMM: Well, after that happened I talked to -  
7 was talking to Jasmine and she had told me that Richard, when  
8 he had got out of jail, he was drinking and that he had told  
9 her that he was at Safeway and there was some underage girl,  
10 some fifteen-year-old girl there that he wanted to coerce into  
11 having sex with him, I guess. And she said that he was so out  
12 of it that he - I guess the police showed up at Safeway to ask  
13 him to leave or something. She said that he said that he  
14 thought he'd already committed the act and that was why the  
15 police were there, I guess. And then he said he came to and  
16 realized that that wasn't why they were there, so.

17 OFFICER PAULSON: And do you know what the girl's  
18 name is at all?

19 MS. GUMM: I don't know. Yeah.

20 OFFICER PAULSON: Okay. Okay. And whenever this  
21 happened at Richard's house -- this occurred at his house,  
22 correct?

23 MS. GUMM: Yeah.

24 OFFICER PAULSON: Okay.

25 MS. GUMM: 1006 Cota Street.

Exhibit 1 G-3

1 OFFICER PAULSON: Okay. And after this happened and  
2 you woke up and, you know, threw him off of you or whatever,  
3 did you have any problems leaving the house that day?

4 MS. GUMM: No.

5 OFFICER PAULSON: He let you leave?

6 MS. GUMM: Yeah.

7 OFFICER PAULSON: Okay. And he didn't say anything  
8 else other than the comment about the girls being --

9 MS. GUMM: You know - well, he acted like it wasn't a  
10 big deal and then he - I had - he had me take him to AM/PM and

11 then back to his house. He's rather large and gregarious and  
12 really well at taking - or giving directions to people, so. See photo!!!  
(states later that she dropped me off at AM/PM!)

13 OFFICER PAULSON: Okay. So you took him to . . . ?

14 MS. GUMM: AM/PM.

15 OFFICER PAULSON: After this happened?

16 MS. GUMM: Yeah.

17 OFFICER PAULSON: Just because you felt intimidated,  
18 like he -- *very leading*

19 MS. GUMM: Yeah.

20 OFFICER PAULSON: -- he was going to make you or?

21 MS. GUMM: Yeah, I just - yeah, he just - I felt like  
22 he was just overbearing and just - I was just in shock that -  
23 yeah, everything that had happened, so.

24 OFFICER PAULSON: Okay.

25 MS. GUMM: And then he - Jasmine Palma picked him up

Exhibit  
So Just after 7:30 a.m. G-4  
But How Do I get back Home before 8:23!!!  
See Exhibit "A"

1 from the parking lot then. He met Jasmine Palma.

2 OFFICER PAULSON: Okay.

3 MS. GUMM: So he left [unintelligible].

4 OFFICER PAULSON: Okay. Let's see here. I'm just  
5 trying to make sure I don't have any other questions for you,  
6 looking over the elements of the crime. So you were one  
7 hundred percent asleep whenever Richard was inappropriately  
8 touching you, correct?

9 MS. GUMM: Yeah, I had been up for a little over a  
10 day doing firewood, so --

11 OFFICER PAULSON: Okay.

12 MS. GUMM: -- I was just exhausted and - yeah.

13 OFFICER PAULSON: Okay. And you and Richard are not  
14 married at all?

15 MS. GUMM: No, no. We've never had any intimate  
16 contact of any sort ever before. Yeah.

17 OFFICER PAULSON: Okay. Okay. And let's see here.  
18 Would, would you be seeing Richard at all anytime soon?

19 MS. GUMM: No.

20 OFFICER PAULSON: Within - you don't see him --

21 MS. GUMM: Well, my stuff's still over there.  
22 They're giving me a hard time about getting my belongings back  
23 from --

24 OFFICER PAULSON: At Jasmine's house?

25 MS. GUMM: Yeah. Dog food at - yeah, so . . . I

1 don't know.

2 OFFICER PAULSON: Okay.

3 MS. GUMM: I mean, my firewood's over there. I'm

4 trying to sell it. I'm just trying to leave Mason County and

5 trying to get to Thurston County or to my sister's. I just

6 keep getting crashed into. I'm sure part of it's my fault,

7 but.

8 OFFICER PAULSON: Okay. I don't have any other  
9 further questions for you, so do you have any questions for me  
10 at this point in time?

11 MS. GUMM: No.

12 OFFICER PAULSON: No? Okay. And do you, Tina Gumm,  
13 declare under the penalty of perjury under the laws of the  
14 State of Washington that the foregoing is true and correct to  
15 the best of your knowledge?

16 MS. GUMM: Yes, I do.

17 OFFICER PAULSON: Okay. And I am going to go ahead  
18 and end the recording now. It is 1415 hours.

19 End of recording.

20 \*\*\*\*\*

21

22

23

24

25

CERTIFICATE OF AUTHORIZED TRANSCRIPTIONIST

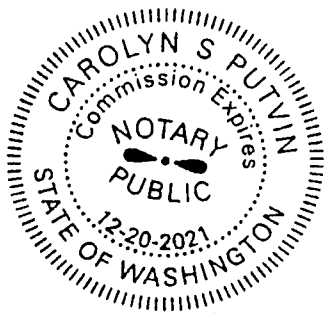
STATE OF WASHINGTON )  
:  
COUNTY OF MASON )

SS.

I, CAROLYN PUTVIN, an authorized transcriptionist for the Superior Court of the State of Washington in and for the County of Mason, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That the foregoing Transcript, Pages One through and including Page Nine, is a true and correct transcript of the digitally-recorded audio recording I received from Eugene Austin, containing an interview (with Tina Gumm by Officer Paulson, which took place on October 3, 2019. This transcript is a true and correct record of the interview to the best of my ability. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and I have no financial interest in the litigation.

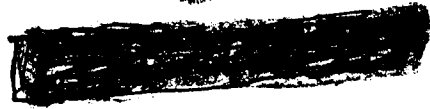
DATED at Shelton, Washington this 25th day of November, 2019.



*Carolyn Putvin*  
Carolyn Putvin, Authorized  
Transcriptionist and  
Notary Public

# Exhibits

"H"



NOTE: STATEMENT BY: Ruth Bader Ginsburg.

## Opposing view: There's nothing left to judge in Flynn case

David Oscar Markus

Chief Justice John Roberts said judges, like umpires, are there "to call balls and strikes and not to pitch or bat." The Justice Department and Michael Flynn agree that their contest is over, so Judge Emmet Sullivan should not force the parties to keep playing.

Our Constitution grants judges power only in an actual controversy, which no longer exists here. This is no abstract principle. The Supreme Court described it as "fundamental to the judiciary's proper role in our system of government." Just this month, Justice

Ruth Bader Ginsburg held for a unanimous court that the judiciary "should not ... sally forth each day looking for wrongs to right." This is especially true in a criminal case, where the judiciary's role is to protect criminal defendants from overzealous prosecutors.

Yes, Attorney General William Barr's decision looks political. But courts are not set up to address politics. When they do, it usually undermines the judiciary, as in *Bush v. Gore*.

If we look the other way in this case because we don't like the defendant or

his supporters, it will likely result in a more politicized judiciary, not a less politicized Justice Department.

The only time judges should weigh in on prosecutorial decisions is when the executive branch breaks a rule to hurt a defendant. The judiciary is meant to check government overreaching, not to prod them into prosecuting. Prosecutors haven't violated anyone's rights by deciding to drop this case. Our system is riddled with prosecutorial abuses, including forcing innocent people to plead guilty with abusive tactics like threatening family members with charges. Those are the cases that should provoke outrage.

In our system, each side is responsible for its own case. Judges ensure that government treats the defendant fairly. They have no interest in forcing prosecutors to prosecute. The parties have resolved their dispute, so there is nothing left to judge. As Justice Roberts put it, "Nobody ever went to a ball game to see the umpire."

David Oscar Markus is a criminal trial and appellate lawyer at Markus/Moss. Follow him on Twitter: @domarkus